



**CIRCUIT COURT for WASHINGTON COUNTY,  
MARYLAND**

24 Summit Avenue  
Hagerstown, Maryland 21740

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**To:** PUBLIC SCHOOL LABOR RELATIONS BOARD  
45 CALVERT STREET  
ANNAPOLIS, MD 21401

**Case Number:** C-21-CV-19-000328  
**Related Case Number:**

**IN THE MATTER OF WASHINGTON COUNTY EDUCATION SUPPORT PERSONNEL, INC.**

**IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY**

**WASHINGTON COUNTY  
EDUCATIONAL SUPPORT  
PERSONNEL,**

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**Case No. C-21-CV-19-000328**

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**Petitioner**

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v.

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**BOARD OF EDUCATION OF  
WASHINGTON COUNTY,**

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**Respondent**

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**OPINION AND ORDER**

This matter came before the Court on a Petition for Judicial Review of a decision by the Public School Labor Relations Board holding that hours worked by non-certificated public school employees is an illegal subject of bargaining. A hearing was held on November 1, 2019, thereafter the Court held this matter sub-curia for a written opinion and order.

**BACKGROUND**

In March of 2019, Washington County Educational Support Personnel (“WCESP”), the bargaining unit for non-certificated employees of Washington County Board of Education including but not limited to paraprofessionals, teachers’ aides, cafeteria workers, and shop assistants filed with the Public School Labor Relations Board (“PSLRB”) a request to resolve an issue of negotiability. The WCESP argued that the Board of Education had to negotiate standard hours with the WCESP pursuant to Md. Code Ann., Educ. 6-510(c)(1). The Board of Education argued that the topic of hours assigned to non-certificated employees of the Board of Education is an illegal topic to negotiate, relying on Md. Code Ann., Educ. 4-103 and 6-201(f). The PSLRB found that hours, days, and months worked constituted illegal subjects of

bargaining. On May 3, 2019, the PSLRB rendered a decision that the number of hours, days and months worked by public school employees is an illegal topic of negotiation, and that Section 4-103 and 6-201 of the Maryland Annotated Code Education gave the Board the authority to set compensation for appointed employees.

The Petitioner timely filed a request for Administration Review in this Court.

The Petitioner argued to the PSLRB and to this Court that the Respondent is mandated to negotiate certain conditions, including hours worked, pursuant to Md. Code Ann., Educ. § 6-510(c)(1). That section of the code provides in relevant part,

On request a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to: (i) Salaries, wages, hours, and other working conditions, including the discipline and discharge of an employee for just cause.

The statute further provides, under Section (3)

A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

The Respondent argued and the administrative tribunal held that negotiating with the Petitioner about the “hours” of its members is “precluded by applicable statutory law,” as provided in the above statute. Particularly, the Respondent points to Md. Code Ann., Educ. § 4-103 and 6-201(f). Both of those statutory provisions require employers such as the Respondent to set salaries and compensation for its employees.

#### **STANDARD OF REVIEW**

In reviewing the legality of the administrative decision, courts have held that it remains within the court's prerogative to reject the agency's interpretation, and to remedy the situation if found to be wrong. *Maryland Aviation Administration v. Noland*, 386 Md. 556, 571 (2005); *Schwartz v. Dep't of Nat'l Res.*, 385 Md. 534, 554 (2005); *John A. v. Board of Educ. Of Howard County*; 400 Md. 363, 381-82 (2007). Deference must be accorded to the administrative agency in its interpretation and application of its statutes; the expertise of the agency in its own field should be respected. *Board of Physician v. Banks*, 354 Md. 59 (1999). An agency's interpretation of the statute it administers is generally entitled to weight. *Bd. Of Ed. For Dorchester Co. v. Hubbard*, 305 Md. 774, 790-791 (1986). Upon review of an error of law, however, the administrative hearing does not receive such deference. *Baltimore Lutheran High Scho., v. Employment Sec. Admin.*, 302 Md. 649, 662 (1985). Specifically, the Court may reject or remand the agency's decision if a right of the petitioner may have been prejudiced because the agency's finding is unconstitutional; exceeds the statutory authority or jurisdiction of the final decision maker; results from unlawful procedure; is affected by an error of law; is unsupported by competent, material, and substantial evidence in the light of the entire record submitted; or is arbitrary or capricious. See Md. State. Gov't Art. §10-222.

The Court of Appeals has also stated that there is a limit to judicial deference that will be granted to the State Board of Education's statutory interpretation. "If the State Board's interpretation or application of [the statute at issue], in a particular situation, would clearly be contrary to the statute's plain meaning, a reviewing court must reject that interpretation." *Howard Cty. Md. Code Ann., Educ. Ass'n-ESP, Inc. v. Bd. Of Md. Code Ann., Educ. Of Howard Cty.*, 220 Md.App. 282, 293-94 (2014), aff'd, 445 Md. 515 (2015) (citing *Montgomery Co. Ed. Ass'n v. Bd. Of Md. Code Ann., Educ.*, 311 Md. 303, 309 (1987)).

## FINDINGS AND DECISION

The issue before this Court is whether the PSLRB erroneously held that hours, days, and months worked by non-certificated public school employees were illegal subjects of bargaining under Md. Code Ann., Educ. §6-510. Petitioner argues the PSLRB's opinion and interpretation of Md. Code Ann., Educ. §6-510(c) violates basic rules of statutory interpretation by ignoring the plain language of the statute. In order to determine whether the decision should be upheld, this Court must determine whether the PSLRB accurately interpreted Md. Code Ann., Educ. §6-510 governing matters subject to negotiation.

The cardinal rule of statutory interpretation is to effectuate the intent of the Legislature. *Chesapeake Charter, Inc. v. Anne Arundel Cty. Bd. Of Educ.*, 358 Md. 129, 135 (2000). The analysis begins by giving effect to the plain and unambiguous meaning of the statute. *Id.* If the plain language is "consistent with the statute's goals and apparent purpose, our inquiry normally ends with that language." *Chesapeake Charter, Inc. v. Anne Arundel Cty. Bd. Of Educ.*, 358 Md. 129, 135 (2000). The Statutory language should be read so that no word or phrase renders any part of it "meaningless, surplusage, superfluous, or nugatory." *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. 31, 40 (1998). "In parsing whether plain meaning or ambiguity is the case, we view the relevant statutory scheme as a whole, rather than seizing on a single provision." *Conaway v. State*, 464 Md. 505, 532 (2019). Even if the plain language is unambiguous, courts may refer to the legislative history to ensure their interpretation is correct. *Bd. Of Educ. Of Balt. Cty. V. Zimmer-Rubert*, 409 Md. 200 (2009).

The Court finds that the language of Md. Code Ann., Educ §6-510(c)(1) is unambiguous and clearly states “hours” as a mandatory subject of negotiation. The plain language of the term “hours” encompasses WCESP’s position to negotiate a minimum number of hours worked by hourly noncertificated employees.

In its decision, the PSLRB determined that the WCESP’s proposal for negotiating hours is an illegal subject of negotiation under Md. Code Ann., Educ §6-510(c)(3) as “precluded by applicable statutory law.” In order to reach its conclusion, the PSLRB took two statutes, Md. Code Ann., Educ. 4-103(a) and 6-201(f), and determined that these statutes precluded negotiation. This Court disagrees. While the PSLRB found that Md. Code Ann. Educ., 4-103(a) and 6-201(f) are to be applied to the case at hand to the exclusion of Md. Code Ann., Educ. 6-510, this Court finds that all three statutes exist harmoniously. It stands to reason that the Board of Education must have the authority to recognize a need with regard to employment and be able to respond to that need. Such authority is granted to the Respondent by Md. Code Ann., Educ. 4-103(a) and 6-201(f). These statutes give the Board of Education the power to appoint non-certificated personnel, set salaries, and determine qualifications, tenure, and compensation. Once the Board of Education has elected to use its power to act under Md. Code Ann., Educ. 4-103(a) and 6-201(f), the ability to negotiate certain terms established by the Board of Education such as but not limited to salaries, wages, hours, and other working conditions become available to the WCESP through the bargaining process under Md. Code Ann., Educ. 6-510. This Court finds that Md. Code Ann., Educ. 4-103(a) and 6-201(f) do not create “applicable statutory law” that precludes the WCESP from negotiating hours worked.

This Court also rejects the argument that this negotiation topic equates to job reclassification. The Court of Appeals has held that reclassification is the “process of reassessing a classified employee’s duties and responsibilities in order to assign a new classification or status to the employee’s position.” *Montgomery Co. Educ. Ass’n, Inc. v. Board of Educ. Of Montgomery Co.*, 311 Md. 303, 320-21 (1987). The WCESP proposed topic of negotiation relates solely to number of hours worked and does not attempt to alter employees’ duties or responsibilities.

### CONCLUSION

The WCESP’s proposal to negotiate the hours worked by hourly public school employees is a mandatory subject of negotiation. The Court rejects the PSLRB’s interpretation of Md. Code Ann., Educ. §6-510(c) as the language of the statute clearly states “hours” are a mandatory subject of negotiation. Therefore, this Court reverses the decision of the PSLRB, and remands the matter to the PSLRB to issue a directive requiring the Board of Education of Washington County and the Washington County Educational Support Personnel to enter into negotiations consistent with this Court’s Order.

The Court’s Order consistent with this opinion is filed simultaneously with this opinion.

2/20/20  
Date

  
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Viki M. Pauler  
Washington County Circuit Court Judge

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

WASHINGTON COUNTY  
EDUCATIONAL SUPPORT  
PERSONNEL,

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BOARD OF EDUCATION OF  
WASHINGTON COUNTY,

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Respondent

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ORDER


This Court, having heard oral arguments and reviewing the case file, and consistent with this Court's opinion filed simultaneously with this order; it is this 20<sup>th</sup> day of **February**, 2020, by the Circuit Court for Washington County, Maryland, hereby

**ORDERED**, the Petitioner's request for relief is **GRANTED**; and

**ORDERED**, that the Decision of the Public School Labor Relations Board is **REVERSED**; and

**ORDERED**, that the case is **REMANDED** back to the Public School Labor Relations Board to issue a directive requiring the Board of Education and the Washington County Educational Support Personnel to enter into negotiations consistent with this Order.

2/20/20  
Date

  
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Viki M. Pauler  
Washington County Circuit Court Judge

Entered: Clerk, Circuit Court for  
Washington County, MD  
February 20, 2020